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14	LINITED STATES	DISTRICT COURT
15		CT OF CALIFORNIA
16	(SAN FRANCIS	SCO DIVISION)
17		7
18	IN RE: CATHODE RAY TUBE (CRT)	Case No. 07-5944 SC
19	ANTITRUST LITIGATION	MDL No. 1917
20		DEFENDANTS' NOTICE OF MOTION
21	This Document Relates to:	AND MOTION FOR SUMMARY
22	P.C. Richard & Son Long Island Corp., et al.	JUDGMENT WITH RESPECT TO MARTA
23	v. Hitachi, Ltd., et al., No. 12-cv-02648;	
24	P.C. Richard & Son Long Island Corp., et al.	ORAL ARGUMENT REQUESTED
	v. Technicolor SA, et al., No. 13-cv-05725;	Date: February 6, 2015 Time: 10:00 a.m.
25		Before: Hon. Samuel Conti
26		_
27		
28	UNREDACTED VERSION OF DOO	CUMENT SOUGHT TO BE SEALED

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DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA
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NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 6, 2015, or as soon thereafter as this matter may be heard before the Honorable Samuel Conti, Senior District Judge in the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California 94102, the undersigned defendants in this action will and hereby do move this Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure with respect to all claims asserted by plaintiff, MARTA Cooperative of America, Inc. ("MARTA").

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof, the declaration of Lucius B. Lau, the pleadings and correspondence on file with the Court, and such arguments and authorities as may be presented at or before the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUES PRESENTED

1. Whether the Court should grant summary judgment with respect to MARTA's

First Claim for Relief (Violation of Section 1 of the Sherman Act) because MARTA lacks antitrust standing.

- 2. Whether the Court should grant summary judgment with respect to MARTA's Second Claim for Relief (Violation of State Antitrust Laws) because MARTA lacks antitrust standing pursuant to the laws of Arizona and Illinois.
- 3. Whether the Court should grant summary judgment with respect to MARTA's First Claim for Relief (Violation of Section 1 of the Sherman Act) because that claim is barred by the customer control exception of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

II. INTRODUCTION

MARTA is a buying cooperative whose

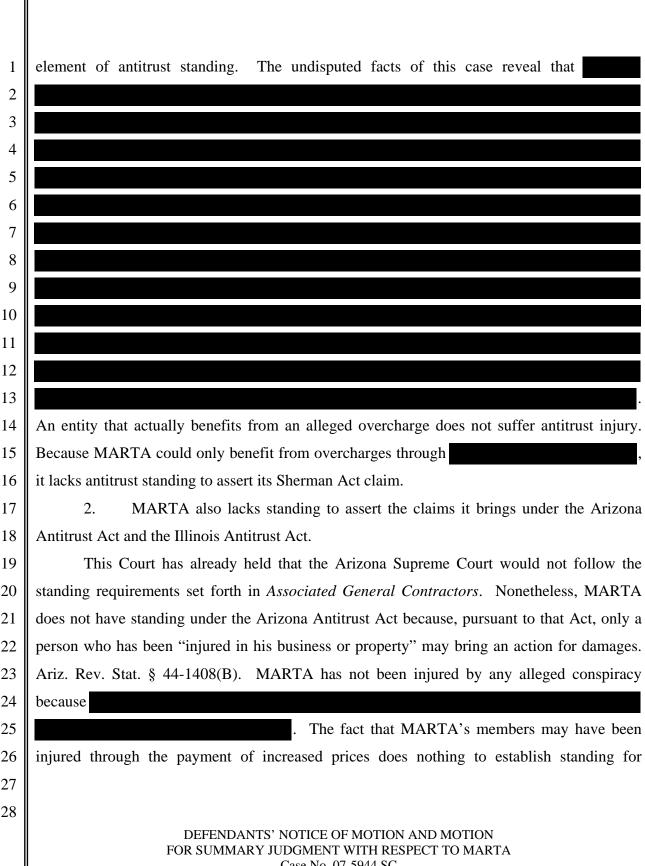
MARTA was owned and controlled by its members. Although MARTA nominally

MARTA was, in reality, simply a conduit between the vendors and the members. MARTA was never harmed by any alleged conspiracy because

Thus, MARTA actually benefitted from any alleged conspiracy because

Given these facts, there are different arguments as to why MARTA's case should be dismissed, but these different arguments all lead to one inescapable conclusion: MARTA is not the proper plaintiff to bring this case. Rather, this is a case that should have been brought by MARTA's members.

1. MARTA lacks antitrust standing to pursue its Sherman Act claims because MARTA did not suffer any antitrust injury. Antitrust injury is a necessary, but not sufficient,



MARTA — per the Arizona Antitrust Act, a person must have suffered injury to "his business or property," not some other entity's business or property.

As to the Illinois Antitrust Act, this Court has already indicated that it found no convincing evidence that the Illinois Supreme Court would not apply *Associated General Contractors*. Given that the federal standing rules apply to MARTA's claims under the Illinois Antitrust Act, MARTA's Illinois claims fail for the same reasons that its federal claim fails.

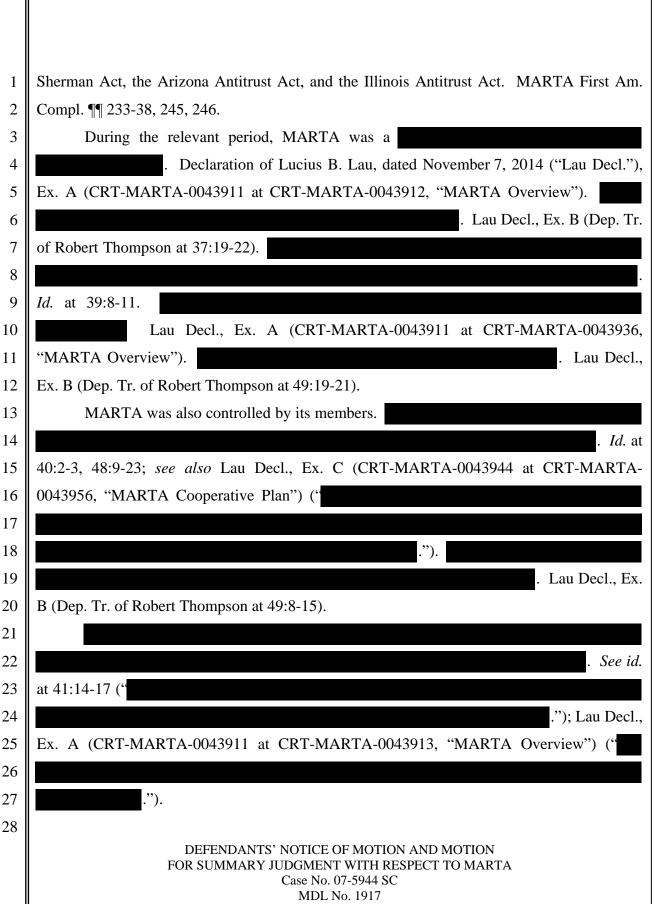
and, as a result, MARTA's claims are barred by the customer control exception to *Illinois Brick*. In circumstances where an indirect purchaser owns or controls the direct purchaser, only the indirect purchaser may assert a claim under the Sherman Act. Here, MARTA was both owned and controlled by its members.

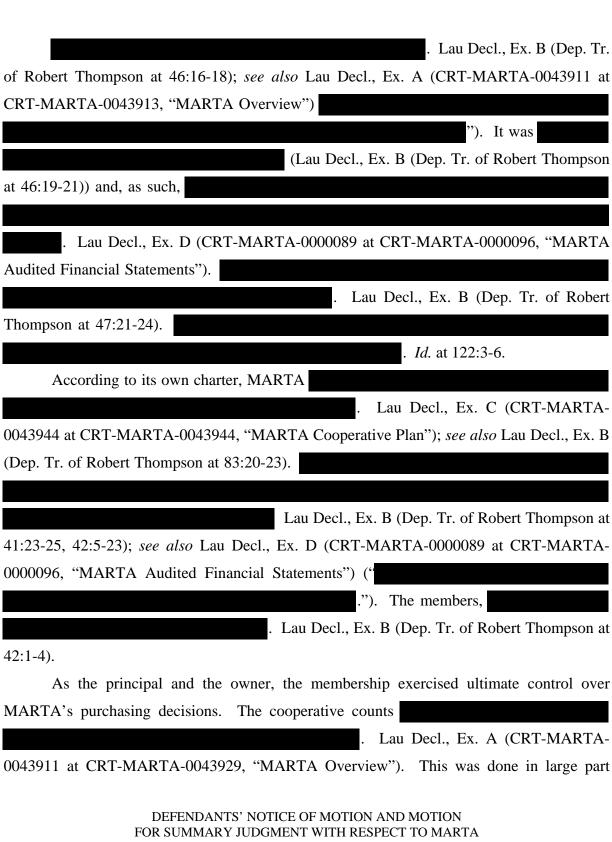
Through this ownership and control, MARTA's members dominated, regulated, and commanded MARTA, and had the power and authority to guide and manage that group. *Accord In re ATM Fee Antitrust Litig.*, 686 F.3d 741 at 757. The fact that provides additional grounds to reach the conclusion that only MARTA's members (and not MARTA itself) have standing to assert a claim under the Sherman Act. The relationship between MARTA and its members is that of agent and principal, not seller and buyer. It is a long-established rule that only the indirect purchaser has standing if there exists a principal-agent relationship that

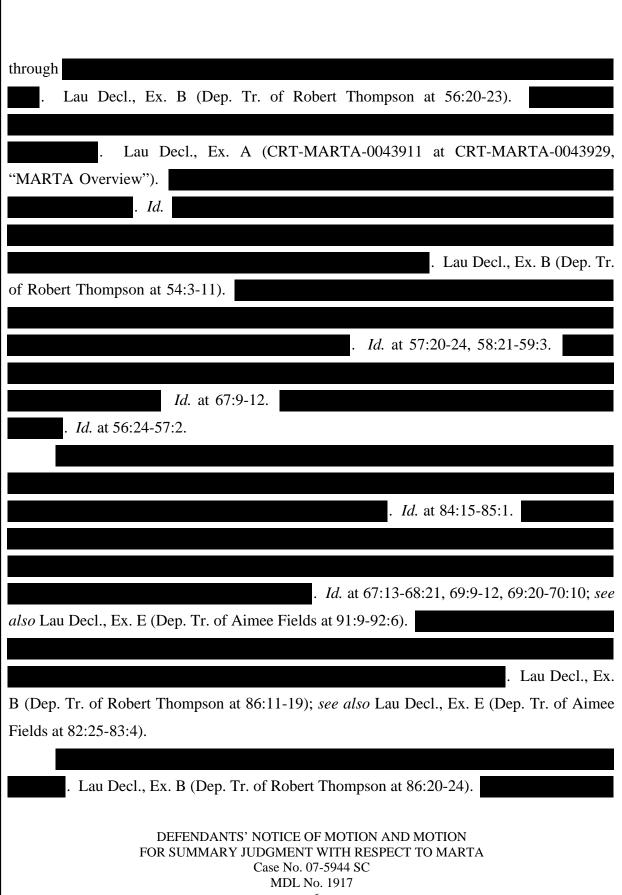
III. UNDISPUTED MATERIAL FACTS

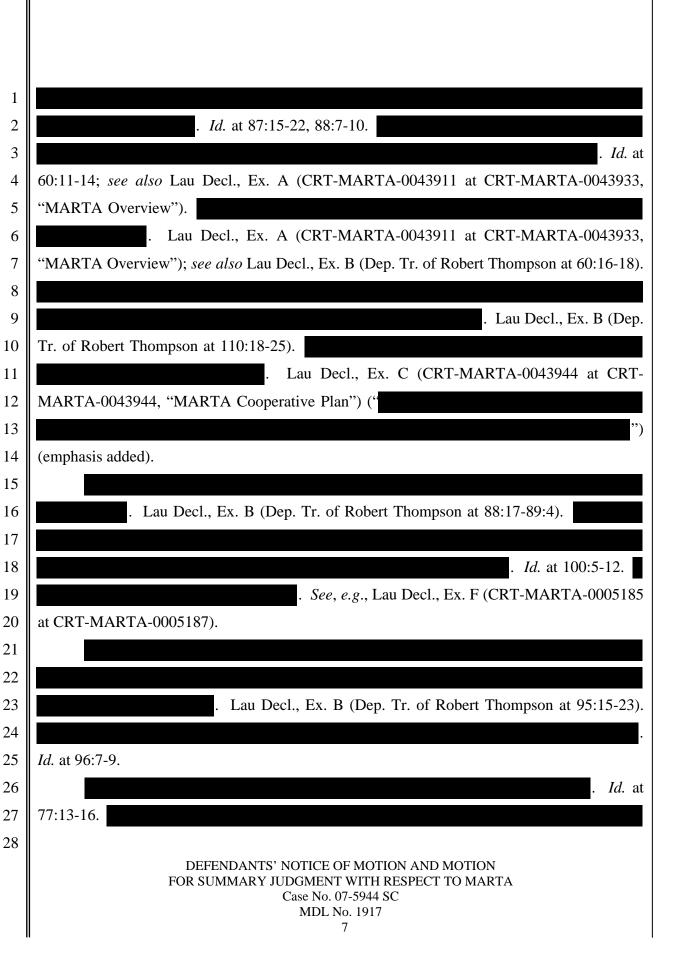
supersedes market forces.

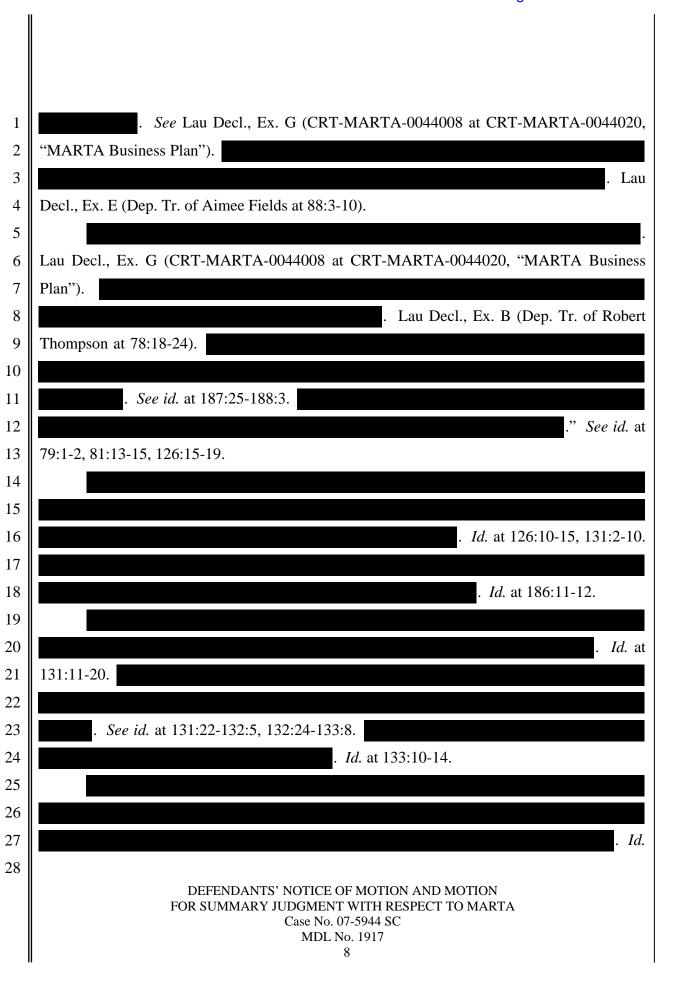
MARTA filed its action in the Eastern District of New York on November 14, 2011. By its amended complaint, MARTA asserted claims against numerous defendants under the

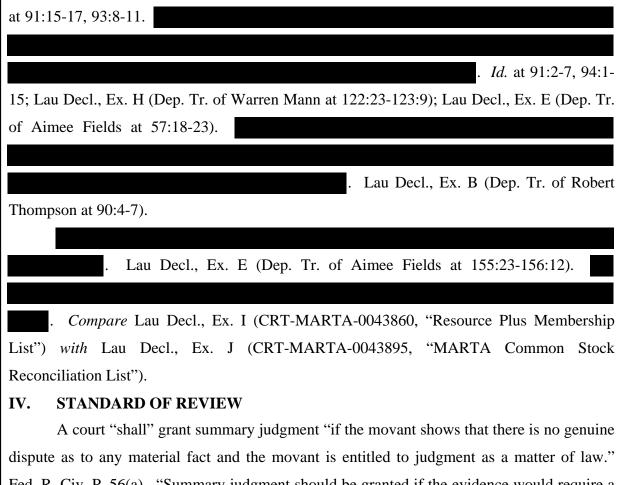












dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Summary judgment should be granted if the evidence would require a directed verdict for the moving party." *Kinetic Systems, Inc. v. Federal Financing Bank*, Case No. 12-cv-01619-SC, 2014 WL 3964952, at *3 (N.D. Cal. Aug. 13, 2014) (Conti, J.) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252.

V. ARGUMENT

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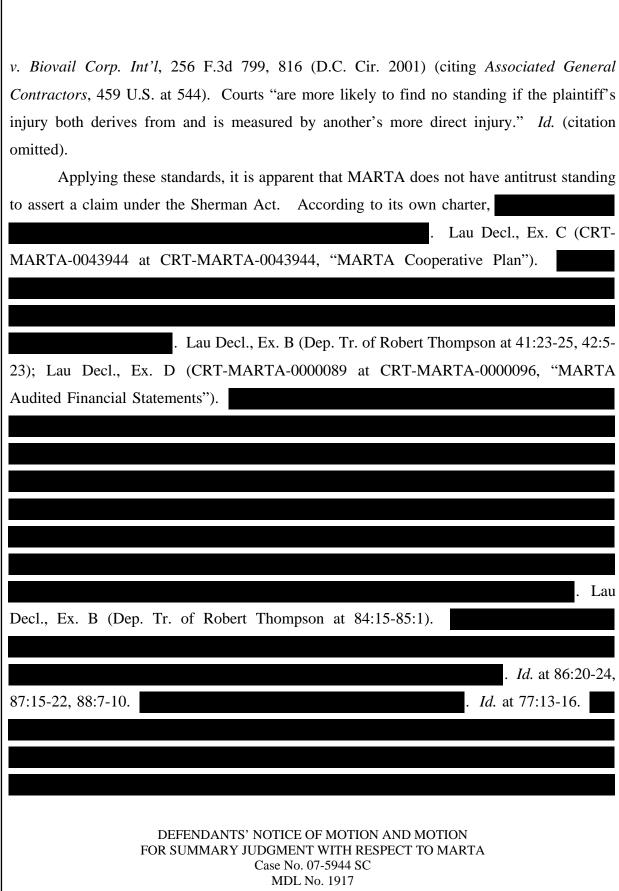
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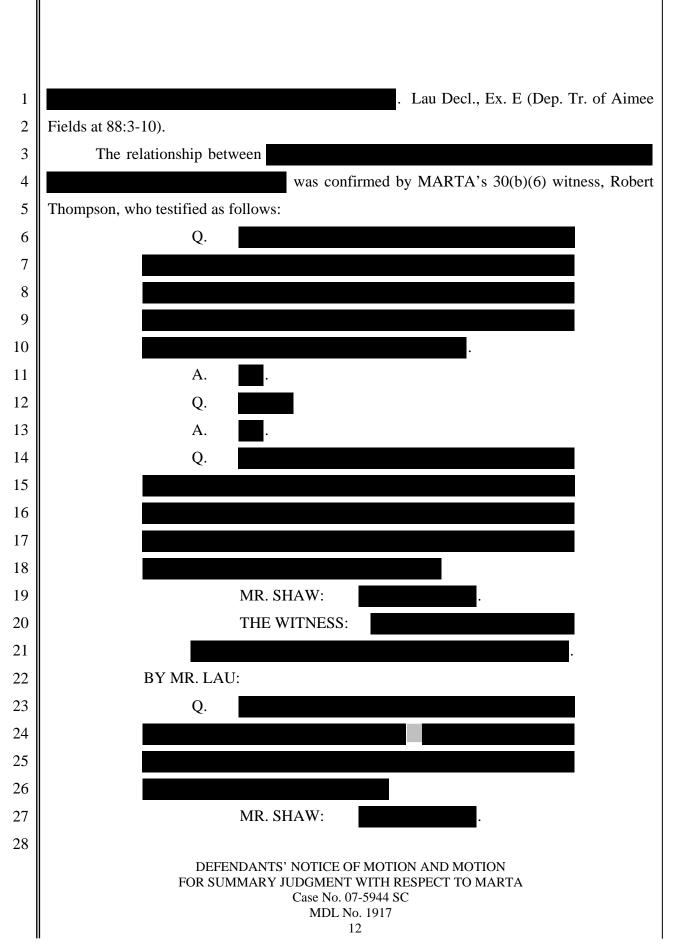
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A. The Motion For Summary Judgment Should Be Granted Because MARTA Lacks Antitrust Standing With Respect To Its Sherman Act Claim

By its First Claim for Relief, MARTA seeks to recover damages for a purported violation of the Sherman Act. This claim should be dismissed because MARTA is a buying cooperative that lacks antitrust standing.

In relevant part, Section 4 of the Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court in the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 15 U.S.C. § 15(a). Notwithstanding the potentially broad scope of this provision, numerous courts have concluded that "Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation." Associated General Contractors of California v. California State Council of Carpenters, 459 U.S. 519, 534 (1983) (quoting Hawaii v. Standard Oil Co., 405 U.S. 251, 263 n.14 (1972)) (internal quotation marks omitted). Consequently, the question whether a plaintiff may recover for the injury it has allegedly suffered by reason of a defendant's conduct "requires us to evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them." Id. at 535. Although there is no "black letter rule" applicable to every case (id. at 536), certain factors are considered: "(1) the nature of the plaintiff's alleged injury; that is, whether it was the type the antitrust laws were intended to forestall; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the risk of duplicative recovery; and (5) the complexity of apportioning damages." American Ad Management, Inc. v. General Telephone Co. of California, 190 F.3d 1051, 1054 (9th Cir. 1999) (citation omitted). "In evaluating standing, courts also consider whether there exists a more directly injured plaintiff to vindicate the public's interest." Andrx Pharmaceuticals, Inc.





MR. DIEL:

THE WITNESS:

Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 131:2-132:5).

A plaintiff cannot establish antitrust injury (and, thus, does not have antitrust standing) if that plaintiff actually benefits from the alleged antitrust violation. For example, the plaintiffs in *Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096 (9th Cir. 1999), were lodge operators and lodging referral services in a ski resort area. With respect to alleged price-fixing of ski packages and lodging accommodations, the Ninth Circuit held that the plaintiffs had not alleged antitrust injury because the plaintiffs "are competitors to, rather than customers of, Defendants in the sale of these services." *Id.* at 1102. In reaching its holding, the Ninth Circuit observed that "Plaintiffs stand to benefit from the fact that prices for those services are inflated." *Id.* (citation omitted)). MARTA is akin to the plaintiffs in *Big Bear* in that it benefited from any overcharge that occurred because

. Thus, it suffered no antitrust injury. Accord American Ad Management, 190 F.3d at 1056 ("There can be no antitrust injury if the plaintiff stands to gain from the alleged unlawful conduct.") (citation omitted); see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 584 n.8 (1986) (noting respondents may not complain about conspiracies that "would actually benefit respondents by raising market prices").

MARTA is also like the plaintiff in *Obron v. Union Camp Corp.*, 355 F. Supp. 902 (E.D. Mich. 1972). The plaintiff in that case was a "jobber," or wholesale dealer who purchased mesh window bags from the defendant. The plaintiff alleged that the defendant and others conspired to create a monopoly through the enforcement of invalid patents. The *Obron* Court reviewed the cases that might bear upon the issue before it, including *Hanover Shoe*, *Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), which held that the defendant was not entitled to a pass-on defense, but which noted that such a defense might be available if there were a pre-existing cost-plus contract. *Obron*, 355 F. Supp. at 905-06. Reviewing the

facts before it, the *Obron* Court stated that "[i]t appears to this Court that if there is not a 'pre-existing cost-plus contract' present here the situation is so strikingly similarly to such a contract as to dictate the allowance of the 'passing-defense.'" *Id.* at 906. The *Obron* Court then explained why:

The plaintiff, as a matter of fact, did not even see the product since it was shipped directly from Union to plaintiff's customers. The price plaintiff charged to his customers was the list price set by Union and the arrangement plaintiff had with Union throughout their years of dealing was that Union charged plaintiff 5% less than the list price. Actually, the arrangement more closely approaches a sales commission than a buyer-seller relationship. The only reasonable inference is that the plaintiff himself profited by any increase in prices set by defendant Union.

Id. These facts led the *Obron* Court to conclude that the plaintiff had not suffered any antitrust injury. *See id.* at 908 (noting that a finding of injury in this case "would subvert the plain language of Section 4 of the Clayton Act which gives a cause of action to 'any person who shall be injured in his business or property . . ."). MARTA, of course, is exactly like the plaintiff in *Obron* in all material respects:

The fact that MARTA never suffered any injury is enough to conclude that MARTA lacks antitrust standing. *See American Ad Management, Inc.*, 190 F.3d at 1055 ("the Supreme Court has noted that '[a] showing of antitrust injury is necessary, but not always sufficient, to establish standing under § 4.") (quoting *Cargill, Inc. v. Monfort of Colorodo, Inc.*, 479 U.S. 104, 110 n.5 (1986)). There are other considerations, however, that support the conclusion that MARTA does not possess antitrust standing. Paramount among these is the fact that

. Thus, allowing MARTA to proceed as a plaintiff in this action could potentially result in a windfall for companies never harmed by the alleged conspiracy.

B. The Motion For Summary Judgment Should Be Granted Because MARTA Does Not Have Standing With Respect To Its Arizona And Illinois Antitrust Claims

By its Second Claim for Relief, MARTA seeks recovery under the antitrust laws of Arizona and Illinois. MARTA's state law claims, however, also fail for lack of antitrust standing.

1. MARTA Has Not Been "Injured" Within The Meaning Of The Arizona Antitrust Act

The Arizona Antitrust Act provides that "[a] person . . . injured in his business or property by a violation of this article may bring an action for . . . damages sustained." Ariz. Rev. Stat. § 44-1408(B). The statute contains a clause that provides that courts "may" look to interpretations of federal courts of comparable federal antitrust statutes to guide their own interpretations of the Arizona Antitrust Act. *See* Ariz. Rev. Stat. 44-1412 ("It is the intent of the legislature that in construing this article, the courts may use as a guide interpretations given by the federal courts to comparable federal antitrust statutes."). Relying upon the Supreme Court of Arizona's decision in *Bunker's Glass Co. v. Pilkington, PLC*, 206 Ariz. 9 (2002), this Court has already held that "the Arizona Supreme Court would not apply *AGC*." *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, Case No. C-07-5944-SC,

2013 WL 4505701, at *9 (N.D. Cal. Aug. 21, 2013). Nonetheless, the Court should still conclude that MARTA does not have standing under the Arizona Antitrust Act.

In its decision, the *Bunker's Glass* Court stated that, "[g]enerally, the best indicator of the meaning of a statute is its plain language." 206 Ariz. at 12 (citation omitted). The Arizona Antitrust Act provides that only a person who has been "injured in his business or property" may bring an action for damages. Ariz. Rev. Stat. § 44-1408(B). As demonstrated above, however, MARTA could not have suffered any injury by reason of any alleged overcharge. Rather, MARTA would have benefited from any overcharge through

. The fact that MARTA's members may have suffered an injury does not help MARTA's standing here. The statute plainly states that a person must suffer injury to "his business or property," not some other entity's business or property.

Applying the plain meaning rule, MARTA has not been injured within the meaning of the Arizona Antitrust Act and, as a result, does not have standing to bring an action under that Act.

2. MARTA Does Not Satisfy The Standing Requirements Of The Illinois Antitrust Act

Previously, this Court stated that it found "no convincing evidence that the Illinois Supreme Court would not apply *AGC*." 2013 WL 4505701, at *10; *see also O'Regan v. Arbitration Forums, Inc.*, 121 F.3d 1060, 1066 (7th Cir. 1977) (federal antitrust standing rules apply under the Illinois Antitrust Act). Given that the federal standing rules apply to MARTA's claims under the Illinois Antitrust Act, MARTA's Illinois claims fail for the same reason that its federal claims fail.

C. The Motion For Summary Judgment Should Be Granted Because The Customer Control Exception To *Illinois Brick* Bars MARTA's Claims

There is a separate reason why the motion for summary judgment should be granted with respect to MARTA's federal claim — the customer control exception to *Illinois Brick* bars that claim.

Washington, DC 20005

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Pursuant the rule announced by the Supreme Court in Illinois Brick, indirect purchasers are generally barred from recovering, under the federal antitrust laws, damages for their antitrust injury. Illinois Brick Co. v. Illinois, 431 U.S. 720, 735, 745-46 (1977). The Court has recognized a limited number of exceptions to the direct-purchaser rule, including one allowing an indirect purchaser to sue when it "own[s] or control[s]" the direct purchaser, because, under those conditions, "market forces have been superseded." Id. at 736 n.16. The Ninth Circuit elaborated that the indirect purchaser's owning or controlling the direct purchaser is illustrative of a situation in which "the effect of the overcharge is essentially determined in advance, without reference to the interaction of supply and demand that complicates the determination in the general case," and the arrangement "circumvent[s] complex market interactions." Royal Printing Co. v. Kimberly-Clark Corp., 621 F.2d 323, 326 n.4 (9th Cir. 1980) (quoting *Illinois Brick*, 431 U.S. at 736). Put slightly differently, the ownership or control exception "encompass[es] relationships involving such functional economic or other unity between the direct purchaser and either the defendant or the indirect purchaser, that there effectively has been only one sale." Sun Microsystems, Inc. v. Hynix Semiconductor Inc., 608 F. Supp. 2d 1166, 1180 (N.D. Cal. 2009). Where the indirect purchaser is the owning or controlling party, the exception describes a circumstance "where an indirect purchaser is clearly the party sustaining the injury caused by the fixing of prices." Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144, 148 (N.D. Cal. 1991). Critically, "[o]nly one purchaser of any specific good whose price has allegedly been fixed may state a claim for damages under the Clayton Antitrust Act" Id. at 151 (holding that only the indirect purchaser, not the direct purchaser, had standing to pursue a Sherman Act claim).

The Ninth Circuit has defined "control" to mean "to exercise restraint or direction over; dominate, regulate, or command," or "to have the power or authority to guide or manage." In re ATM Fee Antitrust Litig., 686 F.3d 741, 757 (9th Cir. 2012). The Northern District has described "ownership of a majority of the [allegedly controlled party's] common stock," "interlocking directorates, minority stock ownership, loan agreements . . . , [or] trust

agreements" as "examples of the types of facts that would satisfy the control exception." Sun Microsystems, 608 F. Supp. 2d at 1180.

1. MARTA Was Owned And Controlled By Its Members

By any measure MARTA fits comfortably in the ownership or control exception.

By any measure, MARTA fits comfortably in the ownership or control exception.

Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 39:8-11). The members' control permeated every aspect of MARTA's operations.

. Id. at 40:2-3, 48:9-23.

. Id. at 49:8-15.

(id. at 58:25-59:3),

. Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043929, "MARTA Overview").

(Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 54:3-11)),

(id. at 58:21-24 ("Q. A. .")).

Through their

, MARTA's members "dominate[d], regulate[d], [and] command[ed]" the cooperative, and had "the power or authority to guide or manage" the group. *In re ATM Fee Antitrust Litig.*, 686 F.3d 741, 757 (9th Cir. 2012). Those factors also set the instant situation apart from the cases in which courts in the Ninth Circuit have ruled against the applicability of the ownership or control exception. *See, e.g., id.* at 757-58 (finding no ownership or control where the banks owned merely ten percent of the publicly held corporation that in turn owned the ATM network, and did not control the intermediary corporation's board of directors); *Sun Microsystems*, 608 F.

1	Supp. 2d at 1180-1182 (finding the ownership or control exception inapplicable because the
2	indirect purchaser failed to show it had structural control — such as interlocking directorates
3	or officers, stock ownership, or loan or trust agreements — over the direct purchasers, or that
4	the latter were its purchasing agents).
5	Being a
6	(Lau Decl., Ex. A
7	(CRT-MARTA-0043911 at CRT-MARTA-0043913, "MARTA Overview"), the economic
8	unity between MARTA and its member shareholders is undeniable.
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12	. It is little wonder that MARTA itself proclaimed that
13	" Id. at CRT-MARTA-0043936. The unity in interest between
14	MARTA and its members was such that, when merchandise flowed from the vendors to
15	MARTA's member dealers through MARTA, "there effectively has been only one sale." Sun
16	Microsystems, 608 F. Supp. 2d at 1180.
17	Because
18	(Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at
19	131:11-132:5, 132:24-133:8)), "the effect of the overcharge is essentially determined in
20	advance, without reference to the interaction of supply and demand that complicates the
21	determination in the general case." Royal Printing, 621 F.2d at 326 n.4. Thus, in MARTA's
22	transactions with its member shareholders, "market forces have been superseded." Illinois
23	Brick, 431 U.S. at 736 n.16. To the extent that MARTA absorbed any cost increase for its
24	members in order to maintain the price competitiveness of select core models, it did so as an
25	agent of, and on behalf of, its members. See Lau Decl., Ex. H (Dep. Tr. of Warren Mann at
26	94:11-23) (explaining, when asked whether it was MARTA or the members who absorbed the
27	cost increases for core models, "I don't think there was anything that MARTA did that

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MARTA's members didn't do . . . Any money that I spent, I spent on behalf of all the members.").

2. MARTA Was A Purchasing Agent For Its Members

Courts have recognized that, "where a particular industry structure includes a principal-agent relationship between the indirect and direct purchasers such that the two are not distinct economic entities in the purchase chain, the indirect purchaser has standing under Illinois Brick." In re NASDAQ Mkt.-Makers Antitrust Litig., 169 F.R.D. 493, 505 (S.D.N.Y. 1996); see also In re TFT-LCD (Flat Panel) Antitrust Litig., Nos. M 07-1827 SI, 2011 WL 3738968, at *2-3 (N.D. Cal. Aug. 24, 2011) (recognizing that entities on whose behalf purchasing entities made purchases from the defendants may sue under *Illinois Brick*'s control exception); In re Lorazepam & Clorazepate Antitrust Litig., 202 F.R.D. 12, 25 (D.D.C. 2001) (finding that plaintiff hospitals have made a sufficient showing of standing where they show that they are members and owners of a group purchasing organization which purchased as their agent the allegedly price-fixed products from the defendants); In re NASDAQ, 169 F.R.D. at 506 (recognizing the standing of indirect purchasers who "transacted through non-Defendant owned brokers where those brokers did not function as a distinct economic entity in the chain of purchase or sale"). In In re Toilet Seat Antitrust Litig., the court interpreted the relationship between the indirect purchaser and the direct purchaser "as that of principal and agent rather than buyer and seller," and determined that the ownership or control exception therefore applied. In re Toilet Seat Antitrust Litig., No. 75-184, 1977 WL 1453, at *2 (E.D. Mich. Aug. 24, 1977). In that case, the direct purchaser was a purchasing concern which purchased for the indirect purchaser at a price approved by the indirect purchaser for a flat monthly fee, and which kept no inventory. *Id.* In some instances, the direct purchaser would be billed first for the purchases and, in turn, would bill the indirect purchaser. *Id.*

This case calls for the same conclusion. MARTA defined itself in its charter as a . Lau Decl., Ex. C (CRT-MARTA-0043944 at CRT-

MARTA-0043944, "MARTA Cooperative Plan"). As such,

3.

TFT-LCD

(Lau Decl., Ex. B (Dep. 1r. of Robert Thompson at 41:23-25)),
See, e.g., Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043929, "MARTA
Overview"); Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 54:3-11, 58:21-24). In the
individual transactions, too,
. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 67:13-68:21,
69:9-12, 69:20-70:10).
. <i>Id.</i> at
91:2-7, 94:1-15; Lau Decl., Ex. H (Dep. Tr. of Warren Mann at 122:23-123:9); Lau Decl., Ex.
E (Dep. Tr. of Aimee Fields at 57:18-23).
. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 91:15-17, 93:8-11). As
an entity which was (id. at 39:8-11), whose purpose was
(id. at 46:16-18), and which
(id. at 131:11-132:5, 132:24-133:8), MARTA did not function as a
distinct entity in the chain of distribution.

In the *TFT-LCD* case, the defendants filed a motion for summary judgment in which they argued (as we argue here), that MARTA lacks standing based upon the customer control exception to *Illinois Brick*. On September 4, 2014, the *TFT-LCD* Court denied this motion. *In re: TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827 (N.D. Cal. Sept. 4, 2014) ("*TFT-LCD* Order") (order denying defendants' motion for summary judgment on Plaintiff MARTA's lack of standing under *Illinois Brick*). In this order, the *TFT-LCD* Court stated that it was "satisfied that MARTA's members did not exercise such control over it that the exception to *Illinois Brick* should apply to them." *TFT-LCD* Order at 5. For the following reasons, we believe that the *TFT-LCD* Court erred in reaching this conclusion.

The Court Should Not Follow The Court's Decision In

Citing to *In re ATM Fee Antitrust Litigation*, 686 F.3d 741, 757 (9th Cir. 2012), the *TFT-LCD* Court stated that, "[a]lthough each of MARTA's members owned stock in the

entity, the individual amounts that each member owned were de minimis, worth a mere
\$4,000." TFT-LCD Order at 5. This observation, however, ignores the fact that
. The fact that the value of each share was
relatively small does not change this fact. The facts of ATM Fee do not support the TFT-LCD
Court's reasoning. The Bank Defendants in that case had a "small ownership percentage" of
Concord, which itself had a "widely dispersed" ownership. ATM Fee, 686 F.3d at 757. These
facts lead the ATM Fee Court to conclude that "Bank Defendants had insufficient ownership
interests to control Concord and thus STAR." Id. In contrast, because the MARTA members
, they collectively had the ability to control MARTA.
The TFT-LCD Court also stated that "MARTA's members participated in committees
that then made suggestions to the Executive Director, but it was the Executive Director who
ultimately negotiated for the programs." TFT-LCD Order at 5. In this case, however,
. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 57:20-24, 58:21-
59:3).
. <i>Id.</i> at 67:9-12.
According to the TFT-LCD Court, "MARTA independently calculated and set the
resale price." TFT-LCD Order at 5. In this case, however,
. Lau Decl.,
Ex. B (Dep. Tr. of Robert Thompson at 126:10-15, 131:2-132:5, 132:24-133:14).
According to the TFT-LCD Court, "MARTA was run not by its members, but by its
Board of Directors." <i>TFT-LCD</i> Order at 5.
. Lau Decl., Ex.
B (Dep. Tr. of Robert Thompson at 40:2-3, 48:9-23).
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DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA Case No. 07-5944 SC

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Examining the undisputed facts of this case, the Court should conclude that MARTA's members both owned and controlled MARTA. In the event that the Court is inclined to follow the *TFT-LCD* Order, we note that the *TFT-LCD* Order only addressed application of the customer control exception to *Illinois Brick*. That order did not address the standing arguments addressed in Sections V.A and V.B of this motion.

VI. CONCLUSION

Dated: November 7, 2014

For these reasons, the Court should grant this motion and dismiss MARTA's complaint in its entirety.

Respectfully submitted,

WHITE & CASELLP

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FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

Case No. 07-5944 SC

MDL No. 1917

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	Cosa No. 07 5044 SC

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26	cases except Office Depot, Inc. v.
27	Technicolor SA, et al. and Sears, Roebuck and Co., et al v. Technicolor SA, et al.
	una Co., et at v. Technicolor SA, et at.
28	DEFENDANTS; NOTICE OF MOTION AND MOTION
	DEFENDANTS' NOTICE OF MOTION AND MOTION

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CERTIFICATE OF SERVICE

On November 7, 2014, I caused a copy of the "DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA" to be electronically filed via the Court's Electronic Case Filing System, which constitutes service in this action pursuant to the Court's order of September 29, 2008.

By: /s/ Lucius B. Lau Lucius B. Lau (pro hac vice)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION

Case No. 07-5944 SC MDL No. 1917

This Document Relates to:

P.C. Richard & Son Long Island Corp., et al. v. Hitachi, Ltd., et al., No. 12-cv-02648;

P.C. Richard & Son Long Island Corp., et al. v. Technicolor SA, et al., No. 13-cv-05725.

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

[PROPOSED] ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA
Case No. 07-5944-SC
MDL No. 1917

Upon consideration of Defendants' Motion for Summary Judgment With Respect to
MARTA and any responses and replies thereto, it is hereby:
ORDERED that the motion is GRANTED; and it is further
ORDERED that MARTA Cooperative of America, Inc.'s First Amended Complaint
is dismissed with prejudice.
IT IS SO ORDERED.
Dated:
HONORABLE SAMUEL CONTI
UNITED STATES DISTRICT JUDGE

[PROPOSED] ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA
Case No. 07-5944-SC
MDL No. 1917

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10	Information Systems, Inc., and Toshiba America				
11	UNITED STATES D	ISTRICT COURT			
12	NORTHERN DISTRICT OF CALIFORNIA				
13	(SAN FRANCISC	CO DIVISION)			
14 15	IN RE: CATHODE RAY TUBE (CRT)	Case No. 07-5944 SC			
16	ANTITRUST LITIGATION	MDL No. 1917			
17		_			
18	This Document Relates To:	DECL A DA ELON OF			
19	P.C. Richard & Son Long Island Corp., et al.	DECLARATION OF LUCIUS B. LAU IN SUPPORT OF			
20	v. Hitachi, Ltd., et al., No. 12-cv-02648;	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH			
21	P.C. Richard & Son Long Island Corp., et al. v. Technicolor SA, et al., No. 13-cv-05725.	RESPECT TO MARTA			
22	v. Technicolor 511, et al., 110. 13 ev 03/23.				
23					
24					
25					
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28					
	DECLARATION OF LUCIUS B. LAI	J IN SUPPORT OF DEFENDANTS'			

I, Lucius B. Lau, hereby declare as follows:

- 1. I am an attorney with the law firm of White & Case LLP, counsel for Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Consumer Products, LLC, Toshiba America Information Systems, Inc., and Toshiba America Electronic Components, Inc.
- 2. I submit this declaration in support of the Defendants' Motion For Summary Judgment With Respect to MARTA, filed contemporaneously herewith. I have personal knowledge of the facts stated herein, and I could and would competently testify thereto if called as a witness.
- 3. Attached hereto as Exhibit A is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0043911 through CRT-MARTA-0043943 ("MARTA Overview").
- 4. Attached hereto as Exhibit B is a true and correct copy of excerpts from the Deposition Transcript of Robert Thompson, dated February 14, 2014.
- 5. Attached hereto as Exhibit C is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0043944 through CRT-MARTA-0044004 ("MARTA Cooperative Plan").
- 6. Attached hereto as Exhibit D is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0000089 through CRT-MARTA-0000101 ("MARTA Audited Financial Statements").
- 7. Attached hereto as Exhibit E is a true and correct copy of excerpts from the Deposition Transcript of Aimee Fields, dated June 4, 2014.
- 8. Attached hereto as Exhibit F is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0005185 through CRT-MARTA-0005189.
- 9. Attached hereto as Exhibit G is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0044008 through CRT-MARTA-0044042 ("MARTA Business Plan").

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10.	Attached hereto a	s Exhibit	H is a	true	and	correct	copy	of o	excerpts	from	the
Deposition T	ranscript of Warren	Mann, da	ted Jul	v 25.	2014	1.					

- 11. Attached hereto as Exhibit I is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0043860 through CRT-MARTA-0043861 ("Resource Plus Membership List").
- 12. Attached hereto as Exhibit J is a true and correct copy of a document produced by MARTA, bearing the bates numbers CRT-MARTA-0043895 through CRT-MARTA-0043897 ("MARTA Common Stock Reconciliation List").

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of November, 2014, in Washington, D.C.

Lucius B. Lau

EXHIBIT A Filed Under Seal

EXHIBIT B Filed Under Seal

EXHIBIT C Filed Under Seal

EXHIBIT D Filed Under Seal

EXHIBIT E Filed Under Seal

EXHIBIT F Filed Under Seal

EXHIBIT G Filed Under Seal

EXHIBIT H

1	IN THE UNITED STATES DISTRICT COURT
2	NORTHERN DISTRICT OF CALIFORNIA
3	SAN FRANCISCO DIVISION
4	x
5	IN RE: CATHODE RAY TUBE (CRT)
6	ANTITRUST LITIGATION
7	No.: 3:07-cv-05944 SCMDL No. 1917 Individual Action No.: 3:11-cv-05514
8	
9	x
10	
11	FRIDAY, JULY 25, 2014
12	9:08 a.m.
13	
14	
15	
16	Video Deposition of WARREN MANN, III, held
17	at the offices of WHITE & CASE, LLP, 1155
18	Avenue of the Americas, New York, New York
19	10036, before Suzanne J. Stotz, a Certified
20	Court Reporter, and a Notary Public of the
21	State of New York.
22	
23	
24	
25	
	1

11:12	1	then you've got to sell it to him at 280 to go
11:12	2	399.99. You don't want it to be 409. And if
11:12	3	the manufacturer has a \$5 price increase,
11:12	4	you're either going to shorten their margin or
11:12	5	you're going to lose the price point.
11:12	6	But we had a third option. And the
11:12	7	third option was you know what, we'll raise the
11:12	8	price a dollar on six other items, but we'll
11:12	9	hold this critical price point because it's an
11:12	10	important part of our business.
11:12	11	Q. You're making reference to the
11:12	12	so-called core models; is that correct?
11:12	13	A. Yes.
11:12	14	Q. Okay. When you talked about
11:12	15	absorbing the cost, would that be something
11:12	16	that MARTA would do or MARTA's members would
11:12	17	do?
11:12	18	A. I don't think there was anything
11:12	19	that MARTA did that MARTA's members didn't do.
11:12	20	MARTA was still a cooperative. We were a
11:13	21	not-for-profit organization owned by the
11:13	22	members. Any money that I spent, I spent on
11:13	23	behalf of all the members.
11:13	24	By the way, a good reason to have a

committee because at least I could say, the

11:13 25

12:00	1	And except for a brief period, we
12:00	2	didn't even have a warehouse. Our job was to
12:00	3	help the members get better pricing, net
12:00	4	pricing, programs, sometimes other advantages
12:00	5	like availability, because we operated as an
12:00	6	entity.
12:00	7	At one time MARTA was the second
12:00	8	largest Toshiba dealer in the country, best by
12:00	9	being the largest; but that was only made
12:00	10	possible because of the way we had to do the
12:01	11	billing. Had the members purchased on their
12:01	12	own, they would have been all splintered out;
12:01	13	and I don't think the largest MARTA member
12:01	14	would have been in the top 50 Toshiba.
12:01	15	Q. You said that except for a brief
12:01	16	period MARTA had no warehouses. During what
12:01	17	period did MARTA have a warehouse?
12:01	18	A. I don't know when it started; but
12:01	19	when I was brought in, they had a warehouse in
12:01	20	Chicago.
12:01	21	Q. And what was the purpose of that
12:01	22	Chicago warehouse?
12:01	23	A. I speak now only from my
12:01	24	understanding of what was explained to me. So,
12:01	25	you know, I didn't make the decision. But it's

12:01	1	often thought that if you have a place to
12:01	2	source stuff, you can make a great buy and
12:01	3	bring it even if you don't have somebody
12:01	4	willing to take it.
12:01	5	If I can move 2000 of these
12:01	6	tomorrow, well, it will take my a while to get
12:01	7	orders. I don't have a while. Buy them now or
12:02	8	I'll sell them someplace else. Oh, bring them
12:02	9	in the warehouse. We'll sell them. The
12:02	10	trouble is it's too volatile a business, and it
12:02	11	would be a good buy at the time. Then you find
12:02	12	out that the reason it was a good buy was there
12:02	13	was something better in the wings, and now
12:02	14	you're stuck with the product.
12:02	15	And when I came to the company,
12:02	16	there was inventory that had been lingering in
12:02	17	that warehouse for a while. So we liquidated
12:02	18	it and shut down and eliminated the overhead.
12:02	19	Q. When was the warehouse shut down?
12:02	20	A. I'm going to guess within a year of
12:02	21	my arrival, so maybe the middle of 2000.
12:02	22	MR. LAU: Mr. Mann, thank you for
12:02	23	your time today. I have no further
12:02	24	questions.
12:02	25	I believe we have one defense

EXHIBIT I Filed Under Seal

EXHIBIT J Filed Under Seal